

TEXAS STATE BOARD OF PLUMBING EXAMINERS

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Guidelines to Determine the Fitness for Licensure of an Applicant With a Criminal Conviction

As a state agency responsible for issuing occupational licenses, the Texas State Board of Plumbing Examiners (TSBPE) must comply with Chapter 53 of the Texas Occupations Code. This chapter, entitled Consequences of Criminal Conviction, sets forth the process for evaluating an application for a license, registration, or endorsement submitted by an individual who has been convicted of a crime anywhere in the United States. Under section 53.025 of the Occupations Code, the TSBPE is required to issue guidelines relating to its practices for evaluating these applications. Section 1301.5421 of the Plumbing License Law also requires the TSBPE to adopt rules "in compliance with the guidelines authorized by Chapter 53 relating to criminal convictions."

The guidelines adopted by the TSBPE are found in 22 Texas Administrative Code §363.27, which reads as follows:

§363.27. Criminal Conviction Guidelines.

(a) Licensed individuals are required to exercise independent judgment and carry out their duties and responsibilities without risking the health, safety, welfare and property of the public. It is estimated that the majority of Plumber's Apprentices are working toward licensure; therefore, the Board has determined that the duties and responsibilities listed in subsection (b) of this section apply to both licensees and registrants.

(b) After considering the factors set forth in §53.022 of the Texas Occupations Code, the Board has identified the following, non-exhaustive list of duties and responsibilities of individuals performing plumbing or plumbing inspections:

(1) entering a consumer's home or a place of business, including but not limited to:

- (A) private residences;
- (B) apartment complexes;
- (C) schools;
- (D) child care facilities;
- (E) elder care facilities;
- (F) health care facilities;
- (G) financial institutions; and
- (H) businesses where valuable merchandise is stored and sold;

(2) making personal contact with consumers and their families, including elderly persons and minor children;

(3) engaging in contractual and financial transactions with consumers;

(4) representing the employer and taking responsibility for vehicles and tools provided by the employer;

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- (5) ensuring safety when working with hazardous, explosive or volatile materials;
- (6) complying with laws, rules, ordinances and codes that regulate plumbing; and
- (7) working with officials who are carrying out their duties to enforce laws, rules, ordinances and codes that regulate plumbing, including:
 - (A) Field Representatives of the Board;
 - (B) Plumbing Inspectors; and
 - (C) other law enforcement officers.

(c) Due to the nature of the duties and responsibilities stated in subsection (b) of this section, the Board has determined that the following offenses are directly related to plumbing (list is not exhaustive):

(1) Any crime of a sexual nature that requires the convicted person to be registered as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure, including:

- (A) Aggravated Sexual Assault;
- (B) Aggravated Rape;
- (C) Sexual Assault;
- (D) Rape;
- (E) Statutory Rape;
- (F) Indecency with a Child (including exposure);
- (G) Prohibited Sexual Conduct;
- (H) Sexual Performance by a Child;
- (I) Possession or Promotion of Child Pornography;
- (J) Aggravated Kidnapping (with the intent to commit an illegal act of a sexual nature);
- (K) Kidnapping (with the intent to commit an illegal act of a sexual nature);
- (L) Unlawful Restraint (with the intent to commit an illegal act of a sexual nature);
- (M) Burglary (with the intent to commit an illegal act of a sexual nature);
- (N) Indecent Exposure;
- (O) Public Lewdness; or
- (P) Improper Photography or Visual Recording.

(2) Any crime of a sexual nature regardless of whether the convicted person is required to be registered as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure;

- (3) Capital Murder;
- (4) Murder;
- (5) Criminal Negligent Homicide;
- (6) Manslaughter;
- (7) Aggravated Kidnapping;
- (8) Kidnapping;
- (9) Unlawful Restraint;
- (10) Injury to a Child, Elderly Individual or Disabled Individual;
- (11) Burglary of a Habitation;
- (12) Burglary of a Building;
- (13) Burglary of an Automobile;
- (14) Robbery;

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- (15) Theft;
- (16) Fraud;
- (17) Forgery;
- (18) Arson;
- (19) Aggravated Assault of a Police Officer (or other public official);
- (20) Aggravated Assault;
- (21) Assault;
- (22) Illegal Drug Related Crimes;
- (23) Terroristic Threat; or
- (24) Any criminal violation of laws or ordinances that regulate plumbing or the practice of plumbing.

(d) The Enforcement Committee shall use the following levels of risk in determining the fitness of an applicant who has been convicted of a crime to perform the duties and discharge the responsibilities of registered and licensed individuals performing plumbing or plumbing inspections. The levels of risk are listed in order from highest to lowest. The Enforcement Committee shall consider those applicants with convictions of a sexual nature or first degree felony to be the highest risk and those applicants who have a conviction other than that of a sexual nature or first degree felony, and who have completed all required consequences of the conviction more than five years prior to the date of application to be the lowest risk.

(1) Level One - Applicants who have:

(A) a conviction of a sexual nature listed in subsections (c)(1) and (2) of this section; or

(B) a conviction for a first-degree felony.

(2) Level Two - Applicants who have a conviction for a second-degree felony.

(3) Level Three - Applicants who have a conviction other than specified in Level One or Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed less than five (5) years prior to the date of application, or are still being completed.

(4) Level Four - Applicants who have convictions other than specified in Level One and Level Two, whose conviction, incarceration, probation, parole, mandatory supervision, court costs or any other fees (including restitution) were completed more than five (5) years prior to the date of application. Written proof of completion from the court, probation or parole officer must be submitted by the applicant.

(e) Applicants with convictions that place them in more than one level of risk, shall be classified using the highest applicable level of risk.

(f) Applicants with multiple convictions will be considered an increased risk, depending on the number and types of convictions.

(g) The Enforcement Committee shall use these guidelines and follow the requirements of §363.15 of this chapter when reviewing applications for registration, examination and renewal of registrations, licenses and endorsements, to determine the fitness of applicants for licensure.